

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of Application of)
)
 ELECTRONIC RADIO SERVICES, INC.) FCC File No. 0000541368
)
 For New Trunked Industrial/Business Pool Station)
 at Atlantic, Iowa, Slater/Alleman, Iowa, Des)
 Moines, Iowa, and Grinnell, Iowa)
)

ORDER ON RECONSIDERATION

Adopted: August 15, 2002

Released: August 21, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On March 7, 2002, Electronic Radio Services, Inc. (ERSI) filed a petition for reconsideration¹ of the February 5, 2002, action of the Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau granting the application in part. For the reasons stated below, we dismiss the Petition because ERSI did not comply with Section 1.945(e) of the Commission’s Rules.²

2. *Background.* On June 29, 2000, the Wireless Telecommunications Bureau accepted the Land Mobile Communications Council’s (“LMCC”) Low Power Plan for the Part 90 450-470 MHz band (“Low Power Plan”).³ Pursuant to that plan, the Commission designated a number of 12.5 kHz offsets in the band for low-power use only, although existing stations were granted grandfathered privileges and, thus, permitted to continue operating with power greater than 2 watts.⁴

3. In 2000, ERSI and ComElec Services (ComElec) entered into an agreement pursuant to which ComElec would partially assign to ERSI twenty channels at four sites (Atlantic, Slater/Alleman, Des Moines, and Grinnel, Iowa).⁵ ComElec intended to retain the remaining two sites (Iowa City and Bettendorf) and elected to keep the existing call sign to avoid having to reprogram the system’s station identifier.⁶ Three of the frequency pairs partially assigned to ERSI were designated for low-power use under the Low Power Plan.⁷

¹ Electronic Radio Services, Inc. Petition for Reconsideration (filed Mar. 7, 2002) (Petition).

² 47 C.F.R. § 1.945(e).

³ Wireless Telecommunications Bureau Accepts LMCC Low Power Plan for Part 90 450-470 MHz Band, *Public Notice*, 15 FCC Rcd 11598 (2000).

⁴ Petition at 2 (citing Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Memorandum Opinion and Order*, PR Docket No. 92-235, 11 FCC Rcd 17676, 17693 ¶ 36 (1996) (exempting existing stations from complying with the newly adopted power/antenna height rules and permitting changes in ownership of those facilities without adversely affecting current operations)).

⁵ Petition at 2. (Although the petition identifies one of the four sites as Allentown, IA, the application lists the site as Alleman, IA.)

⁶ *Id.*

⁷ *Id.*

4. ERSI intended to continue operating the facilities being partially assigned to it with no changes whatsoever in the technical parameters.⁸ As a result, the stations would operate from the same transmitter locations with the same antenna height and power as had been licensed under ComElec's authorization.⁹ Thus, according to ERSI, it was the parties's understanding that ERSI's new authorization would be subject to the same grandfathered privileges associated with ComElec's station.¹⁰ On October 24, 2000, the parties sent two applications to the Industrial Telecommunications Association (ITA), an FCC-certified frequency coordinator, to effectuate the partial assignment.¹¹ At that time, partial assignments required a two-part licensing process: assignment of the frequencies to the assignee and modification of the assignor's license to delete the frequencies being assigned.¹² Accordingly, the parties submitted the following applications: 1) FCC Form 600, on behalf of ERSI, for a new station via the partial assignment of the four sites associated with Station WPPH789, attached to which was an Assignment of Authorization (FCC Form 1046) signed by ComElec; 2) FCC Form 600 to modify Station WPPH789 to delete the four sites via their partial assignment to ERSI.¹³ In October 2000, when the applicants submitted the documents to ITA, these were the appropriate forms to effectuate a partial assignment.¹⁴

5. ITA completed coordination of the applications in July of 2001.¹⁵ In the interim, the third and final phase of the deployment of the Universal Licensing System for land mobile radio services was implemented on December 24, 2000.¹⁶ The Phase III deployment included the 150-512 MHz, 800 and 900 MHz Business and Industrial/Land Transportation Radio Services.¹⁷ Under the ULS, an applicant need file only one form, FCC Form 603, to request a partial assignment.¹⁸ As of December 24, 2000, pre-ULS forms were no longer acceptable.¹⁹ Nonetheless, on July 23, 2001, ITA filed an FCC Form 601 (the ULS replacement form for FCC Form 600) on behalf of ERSI for a new station via the partial assignment of Station WPPH789. On August 9, 2001, ITA filed an FCC Form 601 on behalf of ComElec to modify

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Petition at 3.

¹² FCC 600 Main Form: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization; FCC 600: Schedule D – Administrative Data.

¹³ Petition at 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Wireless Telecommunications Bureau Reminds Land Mobile Radio Services User Community of Mandatory Deadlines Regarding Electronic Filing via the Universal Licensing System, *Public Notice*, 16 FCC Rcd 5261, 5266 (WTB 2001).

¹⁷ *Id.*

¹⁸ Petition at 3-4. *See also* Wireless Telecommunications Bureau Implements Phase III of Three-Phased Deployment of the Universal Licensing System (ULS) for Land Mobile Radio Services on December 4, 2000, 15 FCC Rcd 22013, 22018 (2000) (*ULS Public Notice*).

¹⁹ Petition at 3-4 (citing Wireless Telecommunications Bureau Reminds Land Mobile Radio Services User Community of Mandatory Deadlines Regarding Electronic Filing via Universal Licensing System, *Public Notice*, 16 FCC Rcd 5261 (WTB 2001)).

Station WPPH789 to delete the subject sites.²⁰ ITA was unable to file the applications electronically, so it filed the applications manually with the Commission.²¹

6. On July 31, 2001, the Commission returned ERSI's application on the basis that "[e]ffective 6/29/00 frequencies 451.1875, 451.3625, 451.6125, (FB8/MO8), 456.1875, 456.3625, 456.6125 (MO8) MHz are not available for high power (more than 2 watts output) . . . Such output power must be reduced to 2 watts or less."²² On September 27, 2001, ITA filed an amendment to ERSI's application in which it changed the response to item 8c indicating that the frequencies and parameters requested in the application were grandfathered.²³

7. On October 26, 2001, the Commission granted ComElec's application to delete the four sites being assigned to ERSI.²⁴ On December 7, 2001, the Commission returned for a second time ERSI's application on the basis that the channels identified on ERSI's application were not available for high-power use.²⁵ Additionally, the Commission asked ERSI to justify the twenty channels requested on the application because Section 90.187(e) limits an applicant applying for trunked operation in the Industrial/Business Pool to ten channels.²⁶ Further, according to ERSI, the return notice did not address ITA's September amendment or the fact that ERSI was acquiring the frequencies via partial assignment of Station WPPH789.²⁷ On January 24, 2002, ITA resubmitted the application.

8. On February 5, 2002, the Commission granted ERSI's application in part, explaining that frequency pairs 451.1875 MHz, 451.3625 MHz, 451.6125 MHz, 456.1875 MHz, 456.3625 MHz, and 456.6125 MHz had been deleted from ERSI's application because they are not available for high power use and were thus in violation of Section 90.267(a)(3) of the Commission's Rules.²⁸ Additionally, the Commission removed seven frequency pairs to comply with the ten-channel limitation of Section 90.187(e) of the Commission's Rules.²⁹

9. On March 7, 2002, ERSI filed its Petition. In the Petition, ERSI requests reconsideration of the partial grant of its application, return of its application to pending status, and grant of the application in full.³⁰ ERSI, however, did not reject the partial grant.

²⁰ *Id.* at 4 and Exhibit 2.

²¹ *Id.*

²² *Id.* at 4 and Exhibit 3.

²³ *Id.* at 4 and Exhibit 4.

²⁴ *Id.* at 5.

²⁵ *Id.* at 5 and Exhibit 5.

²⁶ *Id.* at 5.

²⁷ *Id.*

²⁸ Letter dated Feb. 5, 2002 from Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Electronic Radio Services, Inc. to Electronic Radio Services, Inc.

²⁹ *Id.*

³⁰ Petition at 1.

10. *Discussion.* Section 1.945(e) of the Commission's Rules³¹ states:

The FCC may grant applications in part, and/or subject to conditions other than those normally applied to authorizations of the same type. When the FCC does this, it will inform the applicant of the reasons therefor. Such partial or conditional grants are final unless the FCC revises its action in response to a petition for reconsideration. Such petitions for reconsideration must be filed by the applicant within thirty days after the date of the letter or order stating the reasons for the partial or conditional grant, and must reject the partial or conditional grant and return the instrument of authorization.

In this case, while ERSI filed its Petition within thirty days of the partial grant of its application, it failed to reject the partial grant therein. When an applicant fails to reject timely a partial grant of its application, the applicant is deemed to have accepted the partial grant and has waived the right to contest the failure to grant the application in full.³² Accordingly, we will dismiss ERSI's Petition.

11. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 1.945(e) of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.945(e), the Petition for Reconsideration filed by Electronic Radio Services, Inc. on March 7, 2002 IS DISMISSED.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

³¹ 47 C.F.R. § 1.945(e).

³² See *Central Television, Inc. and WTWV, Inc. v FCC*, 834 F.2d 186, 190 (D.C. Cir. 1987) (acceptance of a partial grant forecloses the opportunity to contest the partial grant by rejecting the entire grant and requesting reconsideration); *Peninsula Communications, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 11364, 11368-9 ¶ 11 (2001); *R F Data, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 22410, 22411 ¶ 5 (WTB PSPWD 2001).